IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.471 of 2006

NRC Ltd. Petitioner
Vs.
Mr.Vijaykumar Laxman Kabir & ors. Respondents

Mr.P.K.Rele with Mr.Rajesh Rele, Mr.Vinod Tayade and Mr.Piyush Shah for petitioner.

Ms.Gayatri Singh with Ms.Apoorva Kujwar and Ms.Nerissa Britto for resp.no.1.

CORAM: B.H.MARLAPALLE,J.

August 23, 2006.

P.C.

. Heard Mr.Rele, the learned Sr. Counsel with Mr.Piyush Shah for the petitioner-Company and Ms. Gayatri Singh with Ms.Apoorva Kujwar for the respondent - workman. The Respondent nos.2 and 3 are not necessary parties and they shall be deleted forthwith.

1. Rule. Respondent waives service. Petition is taken up for final hearing forthwith by consent of the parties.

2. The respondent no.1 has instituted Complaint (ULP) No.125 of 1997 challenging his termination from service and in the said complaint he moved an

application for interim relief at Exhibit U-2. The learned Judge of the Labour Court by her order dated 8/6/1999 passed the order on the preliminary issues viz. whether the enquiry conducted was fair and proper and whether the findings recorded by the Enquiry Officer were proper. After hearing both the parties and considering the record of the enquiry submitted before her, the learned Judge of the Labour Court held that though the findings of the Enquiry Officer were not perverse, the enquiry conducted was not fair and proper. This interlocutory order dated 8/6/1999 passed on the preliminary points came to be challenged by the petitioner in Revision Application No.58 of 1999 filed under Section 44 of the MRTU & PULP Act, 1971 and the learned Member was pleased to dismiss the said revision vide the judgment and order dated 8/12/2005. Hence this petition and though it is styled as petition under Articles 226 and 227 of the Constitution it has to be treated as filed under Article 227 of the Constitution.

3. The learned Judge of the Labour Court held the domestic enquiry as not fair and proper only on the ground that the Enquiry Officer did not comply with the requirements of clause 23(4) of the certified

Standing Orders in asmuchas the complainant employee was not given an opportunity to submit his plea on conclusion of the enquiry proceedings. The learned Member of the Industrial Court did not find any reason to interfere with the view taken by the Labour Court. Clause 23(4) of the Certified Standing Orders reads as under;

> "A staff member against whom an inquiry has to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by a staff member working in the same department as himself. Except for reasons to be recorded in writing by the officer holding the enquiry, the staff member shall be permitted to produce witnesses in his defence and cross-examine any witnesses on whose evidence the charge rests. A concise summary of the evidence led on other side and the staff member's plea shall be recorded."

. There is no dispute and so is the finding of

the Labour Court that Clause 23(4) was complied with in its entirety except that the complainant's plea towards the end of the enquiry was not recorded. There is no dispute that the complainant participated in the enquiry, he was represented as per his choice and he was given full opportunity to cross-examine the management's witnesses as well as to examine his own witnesses. The enquiry proceedings also indicate that the evidence was recorded as adduced by both the parties. The enquiry report dated 17/2/1997 was also made over to the complainant. The learned Judge of the Labour Court in her order impugned did not deal with the issue as to how this last deficiency had caused prejudice, injustice or disadvantage to the complainant. On the other hand the learned Judge rejected the submissions made by the learned counsel for the complainant that the findings of the enquiry officer regarding breach of trust and confidence were unsustainable and that the enquiry officer's findings were perverse. On the one hand the learned Judge of the Labour Court held that the enquiry was not fair and proper in asmuchas the complainant's plea was not recorded and on the other hand she held that the findings of the enquiry officer were neither perverse nor were they unsustainable. If the charge has been

proved then conducting a de novo enquiry before the Labour Court becomes redundant and if the learned Judge was satisfied that the enquiry was not conducted in a fair and proper manner or in any way it resulted in breach of the principles of natural justice, it was necessary for her to stop there itself rather than proceeding to answer the second issue and the employer could have been called upon to conduct a de novo enquiry.

4. It is also noted that the complaint has been pending for the last about nine years or so and under challenge is the charge-sheet and the management could not proceed further after the enquiry officer had submitted his report. It is, therefore, necessary that the trial of the complaint is expedited.

5. It is not necessary to refer to the plethora of case law submitted before me by the respective parties as well as the written arguments submitted on behalf of the petitioner and unless the Labour Court had held that the last requirement of clause 23(4) had resulted in causing prejudice to defend himself or resulted in injustice so as to call the enquiry

officer's findings against the complainant in any way illegal or non-compliance was of such a nature that it went to the root of the conduct of the enquiry and violating the principles of natural justice. Merely saying that the last requirement of allowing the complainant to submit his defence plea or record his statement had resulted in the enquiry being not fair and proper does not meet the requirements of law and it was necessary for the learned Judge of the Labour Court to reason as to how the lapse on the part of the Enquiry Officer resulted in violation of the principles of natural justice. Hence the findings on the first point are unsustainable.

6. Resultantly the petition partly succeeds and the impugned order passed by the Labour Court and confirmed by the Industrial Court is hereby quashed and set aside. The Labour Court is directed to hear both the parties on the issue whether the lapse reported has in any way adversely affected the complainant and resulted in breach of the principle of natural justice in any way and if the findings on this issue are against the employer the Labour Court shall call upon the employer to prove the charges de novo by conducting a fresh enquiry before it. This

issue shall be heard and decided as expeditiously as possible and in any case before 31st October 2006.

. If the Labour Court holds that the lapse as noted has not resulted in breach of the principles of natural justice, the Labour Court will proceed to decide the findings of the enquiry officer and in case the parties desire to lead any evidence for deciding whether the charges have been proved by the management, such an opportunity shall be granted. The trial of the complaint shall be completed in any case by 31st March 2007 and both the parties have given an undertaking before me that they would not seek unwarranted adjournments before the Labour Court.

(B.H.MARLAPALLE,J.)